

BEFORE THE VILLAGE OF CHAGRIN FALLS COUNCIL  
CHAGRIN FALLS, OHIO

3805

IN RE: VARIANCE REQUEST OF )  
TODD GOLDSTEIN FOR PROPERTY ) FINAL ORDER OF COUNCIL  
ON 49 WEST WASHINGTON STREET ) AND CONCLUSIONS OF FACT  
)  
) ADMINISTRATIVE ORDER NO.  
) 2014- 43

This matter is before the Chagrin Falls Village Council pursuant to the request of Todd Goldstein ("the Applicant"). The Applicant owns the now vacant residential parcel at 49 West Washington Street ("the Subject Property"). The Subject Property is located on the southeast corner of West Washington Street and Crocker Alley. The Applicant demolished the dilapidated single-family dwelling and proposes to build a new single family dwelling with detached garage on the Subject Property. The Applicant requested a variance from Section 1125.03(f) of the Village of Chagrin Falls Codified Ordinances to permit the construction of the dwelling with a front yard setback of twenty-two feet (22'). Under Section 1125.03(f), the minimum front yard setback is thirty feet (30') in the R1-50 district. The Applicant also requested a variance from Section 1125.03(k) to permit the front entrance feature to project eight feet one inch (8'-1") into the required front yard. Under Section 1125.03(k), a projection of six feet (6') is allowed. Further, the Applicant requested a variance from Section 1125.03(g) to permit a side yard setback of six feet three inches (6'-3") on the west side abutting the alley. Under Section 1125.03(g), the required side yard setback is ten feet (10').

The Village of Chagrin Falls Board of Zoning Appeals met on June 24, 2014, received evidence and testimony, and heard the arguments of the Applicant. The Board of Zoning Appeals, on a vote of 5-0, recommended that Council grant the requested variances.

Council considered the matter upon the record that was created by the Board of Zoning Appeals at its meeting that was held on July 14, 2014. This Final Order of Council and Conclusions of Fact are predicated upon all of the evidence and testimony on the record before Council and, in consideration thereof, the following conclusions of fact are made:

- 1) The Subject Property is located at the southeast corner of West Washington Street and Crocker Alley.
- 2) The Applicant has demolished the original dwelling which was dilapidated and has proposed to build a new single family dwelling with a 22' front yard setback, a 6' 3" side yard setback from the alley and, an 8' 1" entrance feature projection into the front yard.
- 3) The Board of Zoning Appeals incorporated by reference into the record the Board's minutes from its meetings held on December 18, 2012 and February 26, 2013 regarding the prior applications of the Applicant, including the prior testimony of the Applicant's engineer, Chip Hess, regarding the need for a swale on the east side of the proposed house to handle storm water run-off.

4) The Board of Zoning Appeals noted that the proposed dwelling improves the non-conformities of the prior dwelling on the side yard and front yard setbacks and eliminates the existing encroachment on the east side yard.

5) The Board of Zoning Appeals found that the Applicant made a substantial investment in the Subject Property because it was purchased with the intent to restore the original dwelling, but after learning that restoring the original dwelling was impractical, the Applicant was forced to build a new house which is a substantial investment. Therefore, the variances are necessary for the Applicant to make beneficial use of the property and to receive a reasonable return.

6) The Board of Zoning Appeals found that the variances are not substantial because they will have little impact on the neighborhood specifically, the front building line of the proposed dwelling will be in line with the neighboring residences.

7) The Board of Zoning Appeals found that granting the variances would not adversely affect the character of the neighborhood and adjoining properties would not be negatively affected because the location of the proposed dwelling on the Subject Property is necessary due to the current location of the church property and the alley and in order to control water run-off. The Applicant must comply with the Code requirements for water run-off and all site plan requirements before a building permit is issued.

8) The Board of Zoning Appeals found that granting the variances may improve the delivery of governmental services because the proposed dwelling will be further from the alley than the prior dwelling and the Applicant has agreed as a condition of these variances to not erect a fence on the alley side of the Subject Property.

9) The Board of Zoning Appeals found that the Applicant purchased the Subject Property with knowledge of the zoning restrictions but, as stated above, the Applicant purchased the property with the intent to restore the original dwelling which had to be torn down.

10) The Board of Zoning Appeals found that granting the variances meets the spirit and intent of the zoning restrictions because the Applicant has proposed to construct a new dwelling on the Subject Property where the previous dwelling could not be salvaged.

11) This Council notes that Section 1125.03(I) of the Codified Ordinances allows the Planning and Zoning Commission, under certain circumstances, to modify the front yard setback requirement of a residence if the neighboring properties have established a different setback line from that required by the Code. Council finds that the established front setback line in the neighborhood supports the granting of the requested variances, including the limitation on projections into the front yard.

12) The Board of Zoning Appeals noted that there are no known safety issues, the proposed structure does not exacerbate any of the prior conditions, and that the proposed use is a reasonable use of the property, and the health, safety and welfare of the Village is not enhanced by the strict application of the Zoning Code to this property. This Council finds that the Applicant,

therefore, has demonstrated a practical difficulty in the use of the Subject Property, which is a result of the strict application of the zoning ordinance.

13) This Council finds, as recommended by the Board of Zoning Appeals, that the proposed dwelling is an improvement to the Subject Property and does not adversely affect the essential character of the neighborhood.

14) While two neighbors objected to the side yard setback along the alley, the Applicant considered other ways of situating the proposed dwelling and found that the proposed location makes better use of the small lot and allows for the creation of swales to address drainage issues on the property.

15) This Council also finds that the proposed project will not adversely affect the delivery of governmental services.

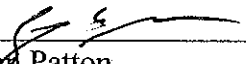
16) This Council also finds and determines, as recommended by the Board of Zoning Appeals, that the spirit and intent of the Zoning Code is observed, and substantial justice is done, by granting the variances. This conclusion is supported by the facts that the neighborhood will not be adversely altered by the proposed variances, the Subject Property will be improved by the proposed project, and the Applicant is seeking the minimum variances necessary to obtain a reasonable use of the property (i.e. the proposed residence).


WHEREFORE, IT IS ORDERED, that the variances to Codified Ordinance Sections 1125.03(f), 1125.03(g), and 1125.03(k), requested by the Applicant, the plans for which are on file with the Building Commissioner, be and are hereby granted - except that this approval shall only apply to the necessary front yard variances. The Applicant may construct the proposed project in accordance with the plans, provided that the Applicant complies with the side yard setback or seeks a variance if he is not able to comply with the side yard setback requirement. This document is deemed by Council to be the final order in this matter.

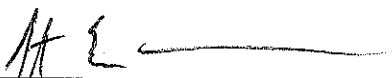
IT IS FURTHER ORDERED, that the Clerk of Council shall mail a copy of this Final Order of Council and Conclusions of Fact to the Applicant, and any other parties requesting same, by first class mail, and note the mailing date upon this order. The decision of this Council shall be deemed final upon the date the Clerk mails this document, as provided herein.

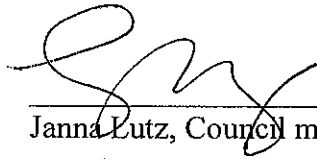
Adopted this 14<sup>th</sup> day of July, 2014, by a majority of the Village of Chagrin Falls Council, who have subscribed their names below.

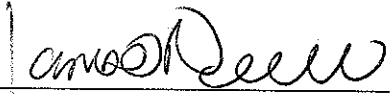
Village of Chagrin Falls Council

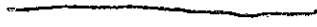
  
Steven Patton,  
President of Council

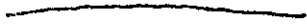
  
Janis Evans,  
Council President Pro Tem

  
Justin Herdman, Council member

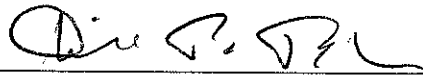
  
Janna Lutz, Council member

  
James Newell, Council member

  
Richard Subel, Council member

  
Thomas Muscenti, Council member

Notice mailed this 14 day of August, 2014.

  
Clerk of Council